

Hon. \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

UNITED STATES OF AMERICA, ON BEHALF )  
OF THE UNITED STATES DEPARTMENT OF )  
THE INTERIOR; STATE OF WASHINGTON )  
THROUGH THE WASHINGTON )  
DEPARTMENT OF ECOLOGY; JAMESTOWN )  
S'KLALLAM TRIBE; LOWER ELWHA )  
KLALLAM TRIBE; PORT GAMBLE )  
S'KLALLAM TRIBE; SKOKOMISH INDIAN )  
TRIBE; and SUQUAMISH INDIAN TRIBE OF )  
THE PORT MADISON RESERVATION, )

Plaintiffs, )

v. )

POPE RESOURCES, a DELAWARE LIMITED )  
PARTNERSHIP; OPG PROPERTIES LLC; and )  
OPG PORT GAMBLE LLC, )

Defendants. )

Case No. 3:24-cv-5470

CIVIL COMPLAINT

COMPLAINT

- 1 -

UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
P.O. Box 7611, Washington, DC 20044  
202-514-5270

1 Plaintiffs the United States of America (“United States”), on behalf of the United States  
 2 Department of the Interior (“DOI”); the State of Washington (“State”) through the Washington  
 3 State Department of Ecology; the Jamestown S’Klallam Tribe; the Lower Elwha Klallam Tribe;  
 4 the Port Gamble S’Klallam Tribe; the Skokomish Indian Tribe; and the Suquamish Indian Tribe  
 5 of the Port Madison Reservation (“Suquamish Indian Tribe”) (collectively the “Tribes”), allege  
 6 as follows:

### 7 **I. GENERAL ALLEGATIONS**

8 1. This is a civil action under the Comprehensive Environmental Response,  
 9 Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a); the  
 10 Model Toxics Control Act (“MTCA”), Wash. Rev. Code § 70A.305.040(2); and the Clean Water  
 11 Act (“CWA”), 33 U.S.C. § 1321(f), against Pope Resources, a Delaware Limited Partnership;  
 12 OPG Properties LLC; and OPG Port Gamble LLC (collectively “Defendants”), for damages for  
 13 injury to, loss, or destruction of natural resources resulting from the release of hazardous  
 14 substances into Port Gamble Bay, located in Kitsap County, Washington.

### 15 **II. JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 9607, 9613(b);  
 17 33 U.S.C. § 1321(n); and 28 U.S.C. §§ 1331, 1345, 1362, 1367(a).

18 3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §  
 19 1391(b), (c).

### 20 **III. PLAINTIFFS**

21 4. Pursuant to the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. § 300.600, DOI is a  
 22 trustee for certain natural resources in Port Gamble Bay.

5. Pursuant to CERCLA, 42 U.S.C. § 9607(f), the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. § 300.605, and Wash. Rev. Code § 70A.305.040(2), the State of Washington is a trustee for certain natural resources in Port Gamble Bay.

6. Pursuant to CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.610, the Jamestown S’Klallam Tribe is trustee for certain natural resources in Port Gamble Bay.

7. Pursuant to CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.610, the Lower Elwha Klallam Tribe is trustee for certain natural resources in Port Gamble Bay.

8. Pursuant to CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.610, the Port Gamble S’Klallam Tribe is trustee for certain natural resources in Port Gamble Bay.

9. Pursuant to CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.610, the Skokomish Indian Tribe is trustee for certain natural resources in Port Gamble Bay.

10. Pursuant to CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.610, the Suquamish Indian Tribe is trustee for certain natural resources in Port Gamble Bay.

11. Each trustee for natural resources identified in this section (“Trustee”) is a member of the Port Gamble Bay Natural Resource Trustee Council (“Trustee Council”). All members of the Trustee Council serve as trustees for the assessment and recovery of damages for injury to, destruction of, loss of and/or loss of use of natural resources and/or the services provided by those resources under their trusteeship.

#### IV. INJURIES TO NATURAL RESOURCES

12. For purposes of this complaint, Port Gamble Bay means any portion of Port Gamble Bay below the ordinary high water mark (including the intertidal and subtidal areas and bottom sediments) in Kitsap County, Washington that is shown in the map attached as Appendix

1 A. Port Gamble Bay is a “navigable water” within the meaning of the CWA, 33 U.S.C. §§  
2 1321(b)(3) and 1362(7).

3 13. Pope and Talbot, Inc. (“P&T”) continuously operated a sawmill on uplands and  
4 tidelands adjacent to Port Gamble Bay (the “sawmill area”) from approximately 1853 to 1995.  
5 Logs for the mill were stored, rafted and sorted in-water throughout the Bay (the “in-water  
6 area”). These areas are identified in the map attached as Appendix B to this complaint.

7 14. In 1985, P&T transferred ownership of the sawmill area to Defendant Pope  
8 Resources (“Pope”). P&T continued wood products manufacturing at the sawmill and in-water  
9 areas under a lease with Pope until 1995, when the sawmill closed and log rafting ceased.  
10 Defendant OPG Properties LLC (“OPG Properties”) managed the sawmill area until 2020, when  
11 ownership was transferred to Defendant OPG Port Gamble LLC (“OPG Port Gamble”), which is  
12 the current owner of the sawmill area.

13 15. There were releases and discharges of hazardous substances to Port Gamble Bay  
14 over many decades from the sawmill and in-water areas adjacent to, and in, Port Gamble Bay.  
15 These releases continued until at least 2015.

16 16. Port Gamble Bay is contaminated with a variety of hazardous substances,  
17 including, but not limited to, polychlorinated dibenzodioxins and furans (“dioxins”),  
18 polychlorinated biphenyls (“PCBs”), organochlorine pesticides and related products, polycyclic  
19 aromatic hydrocarbons (“PAHs”), metals (including lead, mercury, copper, chromium, and  
20 arsenic), volatile and semivolatile organic compounds (including 4-methylphenol), perchlorate,  
21 herbicides, organic solvents, antifouling agents such as tributyltin and other butyltins, and wood  
22 waste degradation products (including phenol, benzoic acid, hydrogen sulfide and ammonia).

17. Hazardous substances have been released and discharged into Port Gamble Bay from the sawmill and in-water areas owned and/or operated by Defendants, and those hazardous substances have caused injury to, destruction of, loss of and/or loss of use of natural resources in Port Gamble Bay under Plaintiffs' trusteeship, including fish, shellfish, invertebrates, birds, surface water and sediments, and resources of cultural significance. Each Trustee and the public have suffered the loss of natural resource services (including ecological services as well as direct and passive human use losses) as a consequence of those injuries.

## V. DEFENDANTS

18. As described above, Defendant OPG Port Gamble is a current owner and/or operator of, and Defendants Pope and OPG Properties formerly owned and/or operated, areas identified in Appendix B to this complaint, from which there have been releases and discharges of hazardous substances to Port Gamble Bay.

19. At all times relevant to this complaint, Defendants have operated and done business in this district.

20. Defendants are each a "person" within the meaning of CERCLA, 42 U.S.C. § 9601(22), the CWA, 33 U.S.C. § 1362(5), and MTCA, Wash. Rev. Code § 70A.305.020(24).

## VI. FIRST CLAIM FOR RELIEF

21. Plaintiffs the State and the Tribes reallege paragraphs 1 through 20.

22. CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section— (1) the owner and operator of a vessel or a facility, [and] (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, ...shall be liable for— . . . (C) damages for

injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; . . .

23. The areas owned and operated, or formerly owned and operated, by Defendants, identified in Appendix B, are “facilities” within the meaning of Section CERCLA, 42 U.S.C. § 9601(9).

24. Materials disposed of and released to Port Gamble Bay from Defendants’ facilities include, but are not limited to, dioxins, PCBs, organochlorine pesticides and related products, PAHs, metals, volatile and semivolatile organic compounds, perchlorate, herbicides, organic solvents, antifouling agents, and wood waste degradation products, which are “hazardous substances” within the meaning of CERCLA, 42 U.S.C. § 9601(14).

25. Releases of hazardous substances have occurred in Port Gamble Bay from the facilities owned and operated, or formerly owned and operated, by Defendants within the meaning of CERCLA, 42 U.S.C. § 9601(22).

26. These releases have resulted in injury to, destruction of, or loss of natural resources within the trusteeship of the State and the Tribes.

27. Defendants are jointly and severally liable to the State and the Tribes for natural resource damages resulting from releases of hazardous substances pursuant to CERCLA, 42 U.S.C. § 9607(a)(4)(C).

## VII. SECOND CLAIM FOR RELIEF

28. Plaintiffs the United States and the State reallege paragraphs 1 through 20.

29. The CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part as follows:

The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into

or upon the waters of the contiguous zone . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited . . . .

30. The CWA, 33 U.S.C. § 1321(f)(2), provides in pertinent part as follows:

Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether an such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government . . . .

31. The CWA, 33 U.S.C. § 1321(f)(3), provides in pertinent part as follows:

Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government . . . .

32. The CWA, 33 U.S.C. § 1321(f)(4), provides in pertinent part as follows:

The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources

damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

33. The areas owned and operated, or formerly owned and operated, by Defendants, identified in Appendix B, are “onshore facilities” and “offshore facilities” within the meaning of the CWA, 33 U.S.C. § 1321(f)(2), (f)(3).

34. There have been discharges of “hazardous substances” within the meaning of the CWA, 33 U.S.C. § 1321(a)(14), including but not limited to phenol and benzoic acid, in harmful quantities, from the identified facilities into Port Gamble Bay and adjoining shorelines.

35. Discharges of hazardous substances from the identified facilities into Port Gamble Bay and adjoining shorelines have affected, damaged, or destroyed natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

36. Defendants are jointly and severally liable to the United States and the State for natural resource damages resulting from discharges of hazardous substances into Port Gamble Bay and adjoining shorelines pursuant to the CWA, 33 U.S.C. § 1321(f).

### VIII. THIRD CLAIM FOR RELIEF

37. Plaintiff the State realleges paragraphs 1 through 20.

38. MTCA, Wash. Rev. Code 70A.305.040, provides in pertinent part as follows:

- (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:
  - (a) The owner or operator of the facility; [and]
  - (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances; [ . . . ]
- (2) Each person who is liable under this section is strictly liable, jointly and severally, for . . . all natural resource damages resulting from the releases or threatened releases of hazardous substances.



1           39.     Materials listed in paragraphs 24 and 34, above, that were disposed of and  
2 released in Port Gamble Bay from the areas owned or operated, or formerly owned or operated,  
3 by Defendants, identified in Appendix B, include “hazardous substances” within the meaning of  
4 Wash. Rev. Code § 70A.305.020(13).

5           40.     The identified areas are “facilities” within the meaning of Wash. Rev. Code  
6 § 70A.305.020(8).

7           41.     Releases of hazardous substances have occurred in Port Gamble Bay within the  
8 meaning of Wash. Rev. Code §§ 70A.305.020(32), 70A.305.040(2).

9           42.     The natural resources that have been and continue to be injured, destroyed, or lost  
10 by the release of hazardous substances from the identified facilities include fish, shellfish,  
11 invertebrates, birds, surface water and sediments, and other such natural resources.

12           43.     The State has incurred and continues to incur costs related to the assessment of  
13 injury to natural resources caused by the releases of hazardous substances from the identified  
14 facilities.

15           44.     Pursuant to Wash. Rev. Code § 70A.305.040(2), Defendants are strictly liable,  
16 jointly and severally, to the State for all damages to natural resources in Port Gamble Bay,  
17 resulting from the release of hazardous substances at or from Defendants’ identified facilities.

## 18                                   **IX.     REQUEST FOR RELIEF**

19           WHEREFORE, Plaintiffs request that this Court enter judgment against Defendants:

20           (1)     For damages for injury to natural resources resulting from the discharges and  
21 releases of hazardous substances in Port Gamble Bay and adjoining shorelines, including the cost  
22 of assessing such damages; and

(2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.

Dated: June 13, 2024

UNITED STATES OF AMERICA

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COMPLAINT

- 10 - UNITED STATES DEPARTMENT OF JUSTICE  
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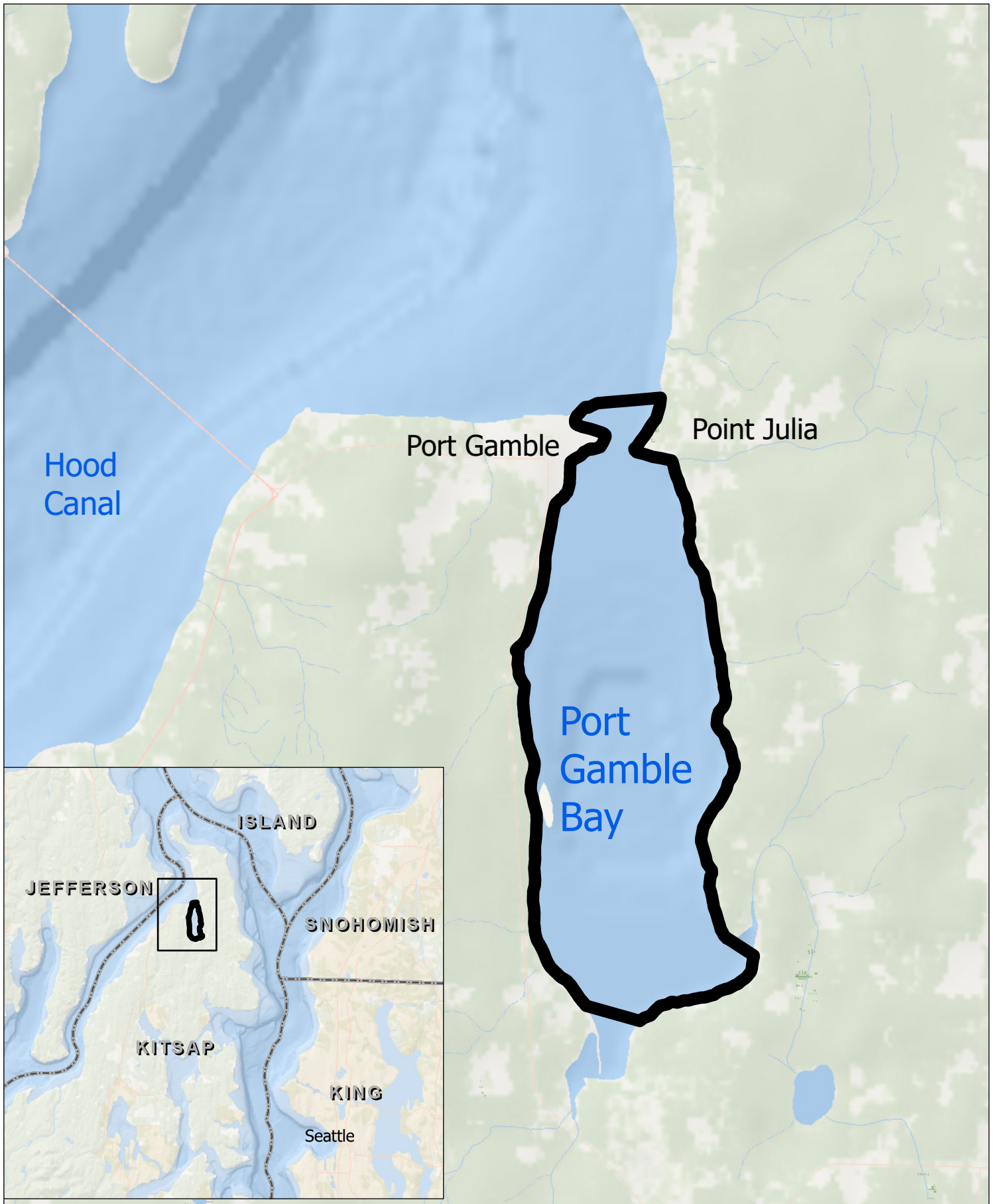
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# Appendix A



Map image is the intellectual property of Esri and is used herein under license.  
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0 0.5 1 Miles

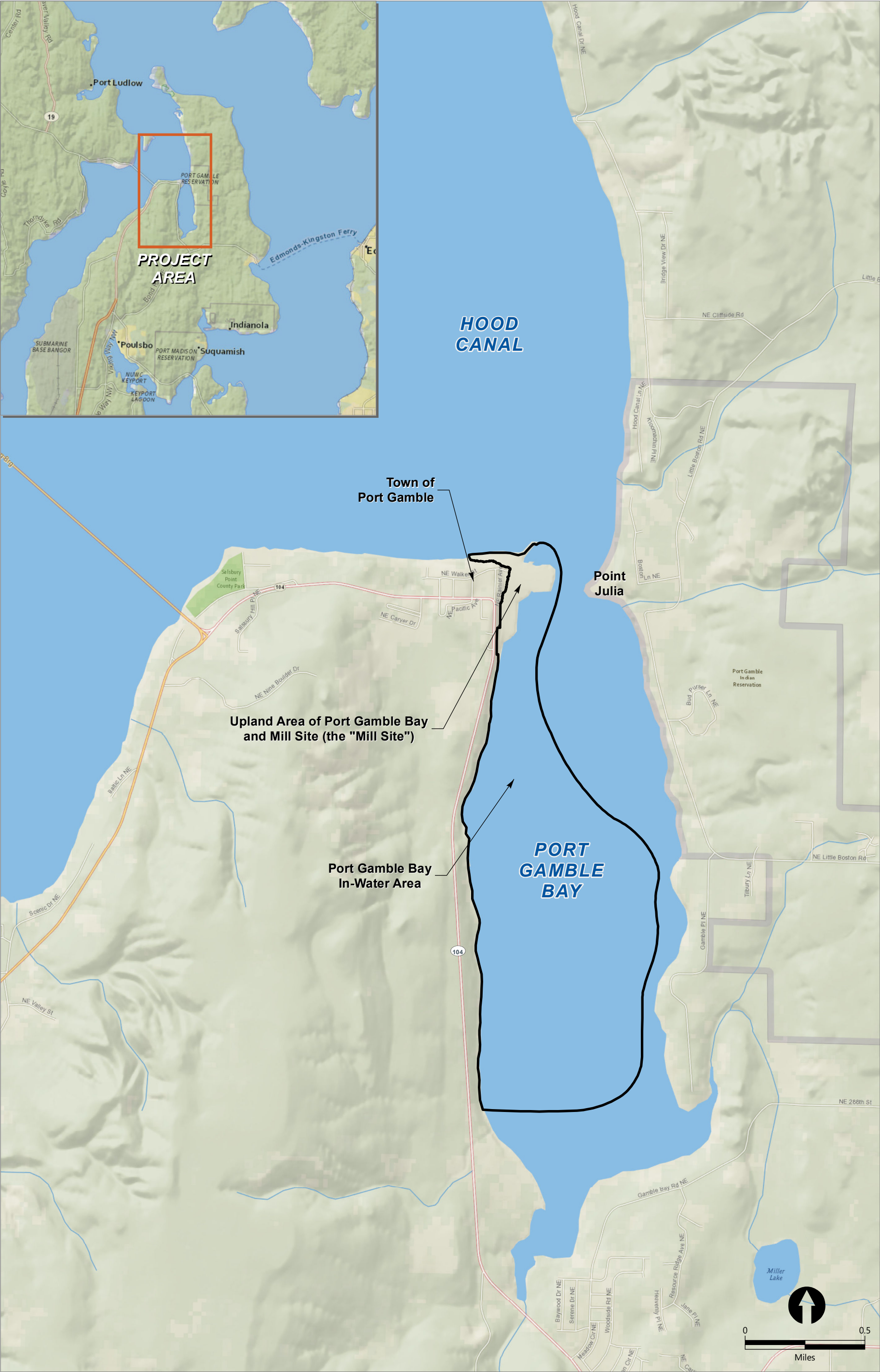
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# Appendix B



DRAFT



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**Figure B-2**  
**Locations of Releases Resulting in Covered Natural Resource Damages**  
Port Gamble Natural Resource Damage Settlement Consent Decree